THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT APPEAL NO.252 of 2001

1st September 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27.01.2000 in W.P.NO.5219 OF 1988 on the file of the High Court.)

Between:

M.V.Venkateswara Rao, S/o.M.Panduranga Rao, 48 years, Employee in ECIL, Malakpet, Hyderabad.

...APPELLANT/PETTIIONER IN W.P.

AND

1. Electronics Corporation of India Ltd., Rep.by its Managing Director, ECIL Post, Hyderabad – 500 762 and one other.

...RESPONDENTS/RESPONDENTS IN W.P.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT APPEAL NO.252 of 2001

JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard both the sides.

The appellant-writ petitioner seeks to assail the dismissal order dated 27.01.2000 in W.P.No.5219 of 1988. In the Writ Petition, the petitioner sought a mandamus for a direction to promote him as Assistant with effect from 1986-87 series with all consequential benefits claiming that he has become eligible as long as in the year 1981-82 but he was not promoted up to the year 1986. When the matter has come up for consideration, his case was not considered. Hence, he filed the above Writ Petition. In the counter-affidavit, which is stated to have been sworn in December 1988, the claim of the petitioner was sought to be denied on the ground that as per his Confidential Reports, he is not entitled to the promotion and hence, he was given less post to which he is entitled to. Hence, the petitioner cannot claim the promotion as such. At the time of the arguments, it appears that the petitioner has filed a reply-affidavit stating that, none of the reports is adverse to him nor they were communicated to him and therefore, the same would not go against him in consideration of his case.

In fact in the affidavit filed in support of the Writ Petition, the petitioner specifically took a plea in para Nos.5 and 6 there of to the effect that in spite of repeated representations, there has been no communication to the petitioner whatsoever from the Corporation disclosing the reasons or even adverse remarks for not promoting him. In view of the fact that the reply-affidavit was filed at a very late hour, i.e. after 10 years, pointing out all the aspects, the learned Single Judge opined that the said aspects cannot be turned out nor any such relief can be granted under Article 226 of the Constitution of India.

Having considered the submissions made on both sides and on perusal of the material available on record, it is seen that the only ground of refusal to consider the petitioner's case on merits in the Writ Petition was that filing the reply-affidavit at a later hour i.e. after 10 years.

It is a known fact that the counters are not filed in time as contemplated under Article 226 of the Constitution of India. By practice, the counters were served even across the Bench when the cases are called and at late hours. We cannot even find fault in filing the

reply-affidavit at such late hour. However, the fact remains that on the date of arguments, both the counter-affidavit as well the reply-affidavit were available before the Court and they could be taken into consideration and the order could be passed on merits. Therefore, the case of the petitioner cannot be refused to be considered merely on the ground of filing the reply-affidavit at late hour. Necessarily the matter needs to be considered afresh and an opportunity should be given to the petitioner to consider his case on merits.

The Writ Appeal is accordingly allowed. The order dated 27.01.2000 is set aside. No costs.

Office is directed to post the Writ Petition “For Final Hearing” before the learned Single Judge hearing the matters.

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(B.PRAKASH RAO, J)

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(DR G.YETHIRAJULU, J)

1st September 2005

RRB

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